

# NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JAN 15 2008

## COMMISSIONERS

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

DOCKETED BY

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In the matter of:

Lingerie Nights DVD Magazine, L.L.C., an  
Arizona limited liability company,

Raymond Javier Duran and  
Jane Doe Duran, husband and wife,

Richard B. Cuen and  
Jane Doe Cuen, husband and wife,

Respondents.

DOCKET NO. S-20574A-08-0023

**TEMPORARY ORDER TO CEASE AND  
DESIST AND NOTICE OF  
OPPORTUNITY FOR HEARING**

**NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY**

**EACH RESPONDENT HAS 20 DAYS TO REQUEST A HEARING**

**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Lingerie Nights DVD Magazine, L.L.C., Raymond Javier Duran, Jane Doe Duran, Richard B. Cuen and Jane Doe Cuen are engaging in or are about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act"), and that the public welfare requires immediate action.

## **I.**

### **JURISDICTION**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

**II.**

**RESPONDENTS**

2. Lingerie Nights DVD Magazine, L.L.C. ("LINGERIE NIGHTS") is an Arizona limited liability company with a principal place of business located in Avondale, Arizona.

3. Raymond Javier Duran ("DURAN") is an individual residing in Avondale, Arizona. According to public records, DURAN is a member of LINGERIE NIGHTS. According to LINGERIE NIGHTS' offering materials, DURAN is the president of LINGERIE NIGHTS.

4. Richard B. Cuen ("CUEN") is an individual residing in Avondale, Arizona. According to public records, CUEN is the statutory agent for, and a member of, LINGERIE NIGHTS. According to LINGERIE NIGHTS' offering materials, CUEN is the owner and chief executive officer of LINGERIE NIGHTS.

5. Jane Doe Duran has been at all relevant times the spouse of Respondent DURAN. Jane Doe Cuen has been at all relevant times the spouse of Respondent CUEN. Jane Doe Duran and Jane Doe Cuen may be referred to collectively as "RESPONDENT SPOUSES." RESPONDENT SPOUSES are joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital communities.

6. At all times relevant, Respondents DURAN and CUEN have been acting for their own benefit and for the benefit or in furtherance of their marital communities.

7. Respondents LINGERIE NIGHTS, DURAN and CUEN may be referred to collectively as "RESPONDENTS."

**III.**

**FACTS**

8. Since at least September 2007, RESPONDENTS have been offering an investment opportunity to the general public by advertising on an Internet website known as Craig's List/Phoenix ("Craig's List").

1           9.     At all times relevant, RESPONDENTS represent to offerees and investors that their  
2 business is based on the creation and distribution of a "monthly lifestyle" magazine on DVD called  
3 Lingerie Nights DVD Magazine (the "Magazine"). RESPONDENTS represent that they will visit  
4 a different city each month to host a lingerie-themed club event and model casting.  
5 RESPONDENTS' written solicitation materials state that the Magazine's monthly content will  
6 include 7 (seven) new aspiring models from a different city each month, and non-nude video shoots  
7 and audio interviews of the models. Information regarding RESPONDENTS' Magazine venture is  
8 identified on their internet website, www.LingerieNightsDVD.com ("Website").

9           10.    RESPONDENTS represented to a potential investor that they were seeking four  
10 "silent investors" to invest \$2,500 each, or one investor to invest \$10,000 to fund their business  
11 enterprise. RESPONDENTS further represented that the investment was passive, and would not  
12 require any work on the part of the investor.

13           11.    RESPONDENTS provided to at least one potential investor solicitation materials  
14 that stated they were seeking investor capital of \$20,000 (i.e., "two \$10,000 investments or one  
15 \$20,000 investment").

16           12.    RESPONDENTS represented to a potential investor that the profit from their  
17 investment would be based on: (1) lifetime royalty shares for each DVD produced and sold by  
18 RESPONDENTS; and (2) paid subscriptions to their Website.

19           13.    In one example, RESPONDENTS represent that, in return for a \$10,000  
20 investment, an investor could earn a profit as follows:

21                   Return on **\$10k** Investment = **20 cents** per DVD sold

22                   (for lifetime of company DVD sales)

23                   10,000 copies sold = \$2,000

24                   \*25,000 copies sold = \$5,000\*

25                   50,000 copies sold = \$10,000

26                   100,000 copies sold = \$20,000

1 500,000 copies sold = \$100,000

2 1,000,000 copies sold = \$200,000

3 (Emphasis in original). In another example, RESPONDENTS represent that, in return for the  
4 aforementioned \$2,500 LINGERIE NIGHTS investment, an investor could earn a profit as follows:

5 Return on **\$2,500** Investment = **5 cents** per DVD sold

6 (for lifetime of company DVD and Web subscription sales)

7 10,000 copies sold = \$500

8 20,000 copies sold = \$1,000

9 \*50,000 copies sold = \$2,500\*

10 100,000 copies sold = \$5,000

11 1,000,000 copies sold = \$50,000

12 (Emphasis in original).

13 14. RESPONDENTS' offering materials fail to adequately disclose the risk of the  
14 investments including, but not limited to, the fact that an investor could lose all or a portion of their  
15 principal investment. Rather, RESPONDENTS' offering materials merely state their greatest  
16 business risk is from market competition.

17 IV.

18 VIOLATION OF A.R.S. § 44-1841

19 (Offer and Sale of Unregistered Securities)

20 15. Since at least September 2007, RESPONDENTS have been offering or selling  
21 securities in the form of investment contracts, within or from Arizona.

22 16. The securities referred to above are not registered pursuant to Articles 6 or 7 of the  
23 Securities Act.

24 17. This conduct violates A.R.S. § 44-1841.

V.

**VIOLATION OF A.R.S. § 44-1842**

**(Transactions by Unregistered Dealers or Salesmen)**

18. RESPONDENTS are offering or selling securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

19. This conduct violates A.R.S. § 44-1842.

VI.

**VIOLATION OF A.R.S. § 44-1991**

**(Fraud in Connection with the Offer or Sale of Securities)**

20. In connection with the offer or sale of securities within or from Arizona, Respondents are, directly or indirectly: (i) employing a device, scheme, or artifice to defraud; (ii) making untrue statements of material fact or omitting to state material facts that are necessary in order to make the statements made not misleading in light of the circumstances under which they are made; or (iii) engaging in transactions, practices, or courses of business that operate or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, failing to adequately disclose the risks of the investment opportunity including, but not limited to, the fact that an investor could lose all or a portion of their principal investment and the risks associated with investing in a new, financially unproven entity.

21. This conduct violates A.R.S. § 44-1991.

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VII.

TEMPORARY ORDER

Cease and Desist from Violating the Securities Act

THEREFORE, based on the above allegations, and because the Commission has determined that the public welfare requires immediate action,

IT IS ORDERED, pursuant to A.R.S. § 44-1972(C) and A.A.C. R14-4-307, that RESPONDENTS, their agents, servants, employees, successors, assigns, and those persons in active concert or participation with RESPONDENTS CEASE AND DESIST from any violations of the Securities Act.

IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

IT IS FURTHER ORDERED that this Order shall be effective immediately.

VIII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order RESPONDENTS to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;

2. Order RESPONDENTS to take affirmative action to correct the conditions resulting from RESPONDENTS' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order that the marital communities of RESPONDENTS and Respondent Spouses are subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and

5. Order any other relief that the Commission deems appropriate.

## XIV.

## HEARING OPPORTUNITY

Each RESPONDENT, including Respondent Spouses, may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. Rule 14-4-307. **If a RESPONDENT or Respondent Spouse requests a hearing, the requesting respondent must also answer this Temporary Order and Notice.** A request for hearing must be in writing and received by the Commission within 20 days after service of this Temporary Order and Notice. The requesting respondent must deliver or mail the request for hearing to Docket Control, Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at [www.azcc.gov/divisions/hearings/docket.asp](http://www.azcc.gov/divisions/hearings/docket.asp).

If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary Order shall remain effective from the date a hearing is requested until a decision is entered.** After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order, with written findings of fact and conclusions of law. A permanent Order may include ordering restitution, assessing administrative penalties, or other action.

If a request for hearing is not timely made, the Division will request that the Commission make permanent this Temporary Order, with written findings of fact and conclusions of law, which may include ordering restitution, assessing administrative penalties, or other relief.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Linda Hogan, ADA Coordinator, voice phone number 602/542-3931, e-mail [lhogan@azcc.gov](mailto:lhogan@azcc.gov). Requests should be made as early as possible to allow time to arrange the accommodation.

## XV.

## ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if a RESPONDENT or Respondent Spouse requests a hearing, the requesting respondent must deliver or mail an Answer to this Temporary Order and Notice to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Temporary Order and Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at [www.azcc.gov/divisions/hearings/docket.asp](http://www.azcc.gov/divisions/hearings/docket.asp).

Additionally, the answering respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007, addressed to Mike Dailey.

The Answer shall contain an admission or denial of each allegation in this Temporary Order and Notice and the original signature of the answering respondent or the respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 15 day of January, 2008.

  
Matthew J. Neubert  
Director of Securities

(JMD)